



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2013

Mr. Grant Jordan
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2013-21937

Dear Mr. Jordan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 512035 (CFW PIR No. W029872).

The City of Fort Worth (the "city") received a request for a specified incident pertaining to an allegation of fraud. You state basic information has been released. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information involves an alleged violation of section 32.51 of the Penal Code, which provides that "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of . . . identifying information of another person without the other person's consent[.]" Penal Code § 32.51(b)(1). For purposes of section 32.51, "identifying information" includes an individual's name, and financial institution account number. *Id.* § 32.51(a)(1)(A), (C). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005, and provides:

(a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

- (1) the name of the victim;
- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and
- (4) the results of any investigation.

(b) On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For purposes of article 2.29, an offense is committed on or after September 1, 2005, if no "element of the offense occurs before that date." Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, the submitted report pertains to an alleged violation of section 32.51 of the Penal Code. We note the requestor is the victim of the alleged identity theft listed in the report, and the alleged offense occurred after September 1, 2005. Therefore, the submitted report is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor, except to the extent that it contains confidential information. *See* Crim. Proc. Code art. 2.29. Although you seek to withhold the report under section 552.108 of the Government Code, this exception does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Thus, the submitted report may not be withheld under section 552.108 of the Government Code.

You also seek to withhold a portion of the information under section 552.147 of the Government Code. Section 552.147(b) generally permits a governmental body to redact a living person's social security number without seeking a decision from this office. *See* Gov't Code § 552.147(b). In this case, article 2.29(b) provides this requestor with a right of access to all information in the submitted report that is not confidential. However, section 552.147 does not make information confidential by law. *See id.* § 552.147(a) (section 552.147 does not make the social security number of a living person confidential). Thus, in this case the city may not rely on section 552.147(b) of the Government Code to withhold the marked social security number.

You also seek to withhold a portion of the information under sections 552.101 and 552.130 of the Government Code. Because sections 552.101 and 552.130 are confidentiality provisions, we will address the applicability of these exceptions to the submitted information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Upon review, we agree the information contains a Federal Bureau of Investigation ("FBI") number that constitutes confidential CHRI generated by the FBI. Therefore the city must withhold the FBI number you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1)-(2). Accordingly, the city must withhold the driver's license information you have marked under section 552.130 of the Government Code.¹

In summary, the city must withhold the FBI number you have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The city must also withhold the driver's license information you have marked under section 552.130 of the Government Code. The city must release the remaining information to the requestor.²

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

²We note the requestor has a right of access to the information being released. If the city receives another request for this same information, it must again seek a ruling from this office.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Rashandra C. Hayes", with a stylized flourish at the end.

Rashandra C. Hayes
Assistant Attorney General
Open Records Division

RCH/eb

Ref: ID# 512035

Enc. Submitted documents

c: Requestor
(w/o enclosures)